



February 19, 1999

Mr. Douglas A. Poneck
Escamilla & Poneck, Inc.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR99-0500

Dear Mr. Poneck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122300.

The San Antonio Housing Authority (the "authority") received a request for the number and dates of sexual harassment complaints received by the authority since January 1997, as well as descriptions of the allegations and disciplinary actions taken in each case.¹ In the event that the responsive statistical data was not available, the requestor sought the complaint forms, disciplinary records, investigation forms and other documents from which the information sought could be gleaned. You advise that the authority has not compiled the requested statistical information. You submit complaint, investigation and disciplinary records responsive to the request, but seek to withhold these records under sections 552.101, 552.102, and 552.107 of the Government Code.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

¹The requestor specifically excluded from the requested information "claims regarding Antonio Flores."

Section 552.102(a) protects

information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

We have examined the submitted records and conclude that they are subject to the ruling in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). The *Ellen* court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. In accordance with the *Ellen* decision, you must withhold from the submitted records the identities of witnesses to and alleged victims of sexual harassment.

You also seek the protection of section 552.107(1), the attorney-client privilege. Section 552.107(1) protects information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct." *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege.

Here, you have not demonstrated, nor is it apparent from the submitted information, how or to what extent the information is protected by the attorney-client privilege. Therefore, you may not withhold any of the information at issue under the attorney-client privilege.

We do note, however, that some of the submitted information may implicate sections 552.024 and 552.117 of the Government Code. Sections 552.024 and 552.117 provide that

a public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members. We have marked information which you must withhold under these provisions if, as of the time of the request here, the employee had elected to keep the information private. Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987). Except as noted above, you must release the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 122300

Enclosures: Submitted documents

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(w/o enclosures)